

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION Nos. 2669, 2676, 2699
and 2700 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

In Misc. Cri. Appln. No. 2669 of 1988 :

M/S.C R INDUSTRIES THROUGH PARTNER CHANDRAVADAN

Versus

STATE OF GUJARAT

In Misc. Cri. Appln. No. 2676 of 1988 :

M/S. ANIK TEXTILES PVT. LTD

Versus

STATE OF GUJARAT

In Misc. Cri. Appln. No. 2699 of 1988 :

M/S. ANIK TEXTILES PVT. LTD.

Versus

STATE OF GUJARAT

In Misc. Cri. Appln. No. 2700 of 1988 :

M/S.C R INDUSTRIES THROUGH PARTNER CHANDRAVADAN

Versus

STATE OF GUJARAT

Appearance:

MR SA SHAH FOR MR AD SHAH for Petitioners

MR SR DIVETIA, APP for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 20/03/97

COMMON ORAL JUDGEMENT

In all these four Misc. Criminal Applications, common questions of fact and law are involved. In Misc. Criminal Application Nos. 2669 and 2700 of 1988, M/s C.R. Industries is the petitioner whereas in Misc. Criminal Application Nos. 2699 and 2676 of 1988 M/s Anik Textiles Pvt. Ltd. is the petitioner. Respondents in all these four applications are common.

2. In all these four petitions, the petitioners are seeking quashing of the Criminal prosecutions lodged against them by respondent No. 2 - Government Labour Officer under Section 22 of Minimum Wages Act. The Criminal Cases against M/s Anik Textiles Pvt. Ltd. are Criminal Case Nos. 7674 and 7675 of 1988 whereas the criminal prosecutions against M/s C.R. Industries are Criminal Case Nos. 7676 and 7677 of 1988.

3. As in all these four proceedings, common questions of fact and law are involved, I proceed to consider all these four Misc. Criminal Applications and I am disposing of them by this common judgment.

4. Respondent No. 2 - Mr N.K. Pandya, Government Labour Officer had lodged the prosecutions against the present petitioners by alleging that the petitioners have not complied with the provisions of Rule 21(4), 25(2) and 26(3) of Minimum Wages Rules, 1961, by alleging that in view of the amendment to the State Government Notification issued on 10th August, 1988, the factories run by the present petitioners are covered by the provisions of Sections 2(g) and 27 of the Minimum Wages Act, 1948 and they are falling in item No. 47. Therefore, they were bound to follow the instructions given in Rules 21, 25 and 26 of Minimum Wages Rules, 1961 but as they have not followed the said Rules they have committed an offence punishable under Section 22 (a) of Minimum Wages Act, 1948.

5. As against the said claim of the respondent No. 2, it is claim of the petitioners before me that the business which the present petitioners are carrying on is not covered by item No. 47 of the notification issued by

the State Government under Section 2(g) and 27 of the Minimum Wages Act, 1948 issued on 10th August, 1988 and, therefore, the prosecutions in question are ill-founded. They, therefore, have come before this Court to quash the said prosecutions by exercising powers under Section 482 of the Code of Criminal Procedure.

6. Therefore, in order to decide the controversy between the parties, it is necessary to see the provisions of Item No. 47 of the Notification issued by the State Government under the provisions of Section 2(g) of the Minimum Wages Act, 1948, on 10th August, 1988. The said Item No. 47 is running as under :-

"47. Employment in preweaving and Textile

Processing Industry in which any of the processes of winding, warping, beaming, sizing, drawing, reaching, weaving, dyeing, bleaching, calendering, folding, finishing, mercerising, printing or glazing of yarn, cloth or articles made of cloth or any process incidental or supplemental thereto."

7. Admittedly, the present petitioners are manufacturing cotton healds. It is pertinent to note that the complainant has not specifically stated in his complaint as to how the petitioners are employers in preweaving and textile processing industry and how it is covered by Item No. 47. He has made only vague allegation that it is a preweaving and textile processing industry. It is not in dispute that the petitioners are manufacturers of cotton healds. Cotton healds are used on looms in textile mills, powerloom units and handloom factories. When fabric is woven on looms, warp and weft threads are incorporated at right angles. The warp threads are drawn from beams and then weft is inserted by means of shuttles. To make way for shuttle, shedding is done among the warp threads. For this shedding work, the warp threads are divided into two sets, odd and even. The function of cotton healds is to divide the warp threads into two parts, odd and even. It makes passage for the shuttle to go across the width of the loom. The healds last for 3/4 months approximately on looms. The petitioners are thus manufacturing cotton healds which are used in textile processing industry. The petitioners themselves are not carrying out any textile processing or preweaving processing in which any of the processes or winding, warping, beaming, sizing, drawing, reaching, weaving, dyeing, bleaching, calendering, folding, finishing, mercerising, printing or glazing of yarn, cloth or articles made of cloth or any process incidental

or supplemental thereto. The petitioners are manufacturing cotton healds which are used in looms in textile mills, powerloom units and handloom factories but the manufacturing of cotton healds could not be of any of the processes enumerated in Item No. 47 of the Schedule prescribed under sections 2(g) and 27 of the Minimum Wages Act, 1948. Therefore, when the petitioners do not fall in the Item No. 47 of the Schedule, there is no question of the petitioners following the provisions of Rules 21, 25 and 26 of Minimum Wages Rules, 1961. Therefore, their failure to follow the procedure under provisions of Rules 21, 25 and 26 would not amount to commission of any criminal offence. The petitioners are making payment of wages, Dearness Allowance, House Rent Allowance and other allowances stipulated as per the settlement between the petitioners and their employees which had taken place on 10th August, 1988 and there was no dispute between the petitioners and their employees regarding the same. The action which the respondent No. 2 has taken is on the basis of the provisions of the Minimum Wages Act by assuming that they are covered by Item No. 47 of the Schedule prescribed under Sections 2(g) and 27 of the Minimum Wages Act, 1948 but as I have indicated, it is quite obvious that they are not covered by the said Item No. 47. Therefore, in the circumstances, the present Misc. Criminal Applications will have to be allowed and the prosecutions of the present petitioners will have to be quashed and set aside. Therefore, I hereby order that the prosecutions of the petitioners in Criminal Case Nos. 7674, 7675, 7676 and 7677 of 1988 lying on the file of Metropolitan Magistrate Court No. 6, Ahmedabad are quashed and set aside. Rule is made absolute.
